



POLICE DEPARTMENT

August 25, 2011

MEMORANDUM FOR: Police Commissioner

Re: Detective Frank Maloney
Tax Registry No. 942112
Criminal Justice Bureau
Disciplinary Case Nos. 85142/09 & 2921/10

The above-named member of the Department appeared before me on February 24, 2011, and April 7, 2011, charged with the following:

Disciplinary Case No. 85142/09

1. Said Detective Frank Maloney, while present at One Police Plaza for promotion to Detective 3rd Grade, on or about November 25, 2008, was wrongfully in possession of an unauthorized duplicate New York City Police Department shield #24583, without permission or authority to do so.

P.G. 203-10, Page 2, Paragraph 18 – PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS

2. Said Detective Frank Maloney, on or about and between December 19, 2006 and November 25, 2008, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective did fail and neglect to properly safeguard his New York City Police Department shield #24583, the loss of which was not reported. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED
CONDUCT
GENERAL REGULATIONS

3. Said Detective Frank Maloney, on or about and between November 25, 2008 and July 8, 2009, did fail and neglect to prepare a Lost/Stolen Firearm/Shield/I.D. Card Report (PD520-150) for his lost, New York City Police Department shield #24583, as required. (*As amended*)

P G 219-21, Page 1, Paragraph 2 – LOST/STOLEN FIREARM, SHIELD,
IDENTIFICATION CARD
DEPARTMENT PROPERTY

1 Said Detective Frank Maloney, while on-duty and assigned to the Vehicle Identification Unit, on or about October 1, 2010, having been directed by New York City Police Lieutenant Sean Puig, Tax No 925944, to return to the Vehicle Identification Unit, did fail and neglect to comply with said order, to wit said Detective did fail to return to the Vehicle Identification Unit as directed and said that he was going to the Inspector (*As amended*)

P G 203-03, Page 1, Paragraph 1 – COMPLIANCE WITH ORDERS
GENERAL REGULATIONS

2 Said Detective Frank Maloney, while on-duty and assigned to the Vehicle Identification Unit, on or about October 1, 2010, was discourteous to on-duty New York City Police Lieutenant Sean Puig, Tax No 925944, to wit said Detective was argumentative, implied that said Lieutenant was being untruthful, subsequently raised his hands in the air and yelled at said Lieutenant and was physically and verbally confrontational toward said Lieutenant. (*As amended*)

P G 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL
GENERAL REGULATIONS

3 Said Detective Frank Maloney, while on-duty and assigned to the Vehicle Identification Unit, on or about October 1, 2010, was discourteous to on-duty New York City Lieutenant Marlene Beaman, Tax No 889558, to wit said Detective did ask said Lieutenant

P G 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT – GENERAL
GENERAL REGULATIONS

Office, and the Respondent was represented by Joseph Librie, Esq

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No 85142/09

The Respondent is found Guilty

Disciplinary Case No 2921/10

The Respondent is found Guilty of Specification Nos 1 and 2 The Respondent is found Not Guilty of Specification No 3

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Clerical Associate Mary Desiderio, Associate Staff Analyst Jennifer Cama, Lieutenant Sean Puig, Sergeant Jacob Siedlik, Lieutenant Marlene Beaman, Lieutenant John Crisalli, and Sergeant Matthew Smith as witnesses

Clerical Associate Mary Ann Desiderio

Desiderio, a 30-year member of the Department, has been assigned to the Employee Management Division's Shield Desk/Identification Unit (SDIU) since 1989. Desiderio's duties include receiving and issuing shields from members of the service who are being promoted, retiring, or replacing lost shields. On an average day she sees 20 to 25 shields. She explained that when a member of the service retires or is promoted, the member must submit to SDIU an authentic, official, Department-issued shield. If a member submits any other shield, he must prepare a lost report for the original one.

Desiderio noted that some fake shields are easy to spot because they have the word "replica" written on them. Fake shields can also be discerned by markings on the back of the shield, such as lines that are not present on authentic shields. The Department has a mold for each type of shield issued, but Desiderio explained that if "you work [at SDIU] long enough, you really don't need the mold. You should be able to tell a fake shield from a real shield." Desiderio added that she personally "almost never" used a mold to determine whether or not a shield is in fact authentic. She explained that a mold is used only in those cases where the SDIU shield examiner cannot tell by sight alone whether a shield is authentic.

On November 25, 2008, Desiderio and her supervisor, Jennifer Cama, were assigned to collect the shields from members being promoted and to issue them new ones. The Respondent appeared at Desiderio's desk and handed her a police officer shield. Desiderio determined that the Respondent's shield was not authentic because it was fatter on the bottom than an official shield, it did not have three lines on each side, and there were lines across the pilgrim and the Indian on the face of the shield. Because she could tell without doubt by visual examination that the Respondent's shield was not genuine, Desiderio did not need to use a mold. Desiderio asked the Respondent for his other shield. The Respondent did not deny that he had another shield, but he did not present her with one. Desiderio explained that in these situations, she holds onto the fake shield and instructs the member to bring the original to the SDIU office as soon as possible. In addition, Desiderio would have probably informed Cama that the Respondent's original shield still needed to be collected. After returning to her office

that day, Desiderio placed on her desk the shield that the Respondent had turned in. After a few days, she put it in an envelope and filed it.

A few days later, the Respondent appeared at the SDIU office with his father and handed in another police officer shield. When Desiderio examined this shield she was "flabbergasted" because the Respondent had again turned in a bogus shield. This shield was identical to the first shield that he turned in, as it also had a fat bottom, no lines on the sides, and lines across the picture. Desiderio showed the shield to Cama, and together they confronted the Respondent. The Respondent claimed that he believed the shield was real. At that point, they would have told the Respondent to either look for the original shield or report it lost. A Lost/Stolen Shield Report was ultimately prepared "much, much later." The Respondent never submitted an authentic, Department-issued police officer shield to SDIU.

On cross-examination, Desiderio testified that there are four people assigned to work in SDIU, and their friends may visit the office during the course of the day. The office is locked at night, and there is also a security alarm. Shields are placed in locked file cabinets at the end of the day. On promotion days, however, shields may stay out on people's desks a little longer because all the shields have to be sorted through. Desiderio reiterated that when she returned to her office on promotion day, she left the shield that she received from the Respondent on her desk. It was still there when the Respondent turned in a second shield a few days later. Of the two shields, one was shinier than the other. They were identical to each other in every other way, and they were distinct from the thousands of other shields that Desiderio has seen during the course of her career. [Department's Exhibits (DX) 1 and 2 were identified by Desiderio as the two shields

submitted by the Respondent. They are numbered 24583, which was the shield number assigned to the Respondent in the Police Academy. The shields were in envelopes that contained handwriting Desiderio did not recognize as her own, and she explained that one of her co-workers must have placed the shields inside the envelopes.] SDIU personnel made numerous telephone calls about the matter to the Respondent's command. The Lost/Stolen Shield Report was not filed until many months later.

On redirect-examination, Desiderio testified that the shield that the Respondent gave her on promotion day stayed right next to her until she brought it upstairs to her office a couple of hours later.

Associate Staff Analyst Jennifer Cama

Cama, a 22-year member of the Department, has been assigned to SDIU since 2001. As the unit supervisor, she personally examines one or two shields a day. When a member of the service who is being promoted or retiring turns in a shield, SDIU personnel examine it to make sure it is authentic. SDIU . . . a bogus shield by the shield's size and markings, and it is rare for a member of SDIU to need a mold to determine authenticity. Cama explained that when a member turns in a shield to SDIU that is determined to be a bogus shield, SDIU confiscates the shield along with the member's identification card, and the member is instructed to bring his official shield to SDIU the following business day. Meanwhile, the bogus shield is stored in the SDIU office. Only the people assigned to the unit can access the office during the day. At night, the office is locked and secured by alarm. If, after a few days, SDIU has

not received the member's official shield, SDIU personnel will contact either the member or the Integrity Control Officer (ICO) at the member's command

On November 25, 2008, Cama was present when the Respondent handed a police officer shield to Desiderio. Cama overheard Desiderio tell the Respondent that he had turned in a fake shield and that he had to come to SDIU the following business day to turn in his official shield. Cama did not personally speak to the Respondent that day. Cama did examine the shield and she agreed with Desiderio's determination that it was a bogus shield because the shield looked fairly new, there were markings on the back of the shield that do not exist on the mold, and the lugs on the rear of the shield were short and stumpy.

A few days later, Cama was sitting at her desk inside SDIU's office when she overheard the Respondent speaking to Desiderio about another shield. When Cama was shown the shield that the Respondent had presented at SDIU that day, she concluded that it looked just like the one he had submitted on promotion day, in that it had the same distinctive markings. SDIU kept both of these bogus shields. Cama waited for the Respondent to either submit an official shield or submit a Lost/Stolen Shield Report. The ICO at the Respondent's command eventually prepared a report for the shield many months later. Cama testified that it was impossible that either of the shields that the

Day at the Police Academy

Cama conducted an in-court examination of both of the shields (DX 1 and DX 2) that were turned in by the Respondent. Cama explained that both shields are bogus shields because there are no lines on the left side of the shields, a characteristic found in

the mold for the official shield. Also, on the rear of these shields are lines that run from left to right, markings that are not present on an official shield. Additionally, the lugs on the shields are not official and the shields do not resemble shields manufactured during the 1960s which Department records show was when the Respondent's Department-issued shield was manufactured. Cama noted that shields produced during the 1960s were much smoother and finer and had a different type of lug. [DX 3 contains the history of the Respondent's shield, indicating that the shield was first issued in 1964 and re-plated once in 1998.]

On cross-examination, Cama explained that her training consisted of on-the-job observations of various shields. Her predecessor at SDIU instructed her on how to identify particular markings on shields. Cama was not questioned at an official Department interview or otherwise interviewed by the Internal Affairs Bureau (IAB) regarding the Respondent's shields. She did speak to the ICO at the Respondent's command.

Cama compared the shields that the Respondent turned in with an official police shield [Respondent's Exhibit (RX) A]. In comparing DX 1 and DX 2 with RXA, Cama explained that the official shield (RX A) has a much smoother background and has a much smoother texture, whereas the bogus shields (DX 1 and DX 2) are much thicker, have no markings, and have more noticeable bumps. Cama added that the back of the official shield is much smoother and has no lines running left to right on the shield. The size and positioning of the lugs on the official shield (RX A) are different from the lugs on the bogus shields (DX 1 and DX 2) and the body of the lugs on the official shield is much thinner and smoother.

Cama stated that she was unsure as to whether the official shield (RX A) had ever been re-plated during the course of its history. Based on the distinctive markings found on both of the bogus shields that the Respondent submitted to SDIU (DX 1 and DX 2), Cama concluded that both shields were produced by the same manufacturer.

Lieutenant Sean Puig

Puig, an 11-year member of the Department, is currently assigned as commanding officer of IAB's Vehicle Identification Unit (VIU). Puig is responsible for overseeing the distribution and collection of Department restricted parking permits, vehicle identification plates, and Headquarters annex permits.

Puig explained that the Respondent was assigned to VIU in September 2009, and his duties consisted of processing applications for restricted parking permits, distributing parking permits and vehicle identification plates, and answering requests for information from various units. The Respondent was specifically assigned to process parking permits that were distributed to the Emergency Services Unit (ESU) and to the Intelligence Division. When the Respondent was not processing parking permits for those two commands, he would process applications for other commands. The Respondent's supervisors were Sergeant Jason Gauch and Sergeant Jacob Siedlik. On October 1, 2010, the Respondent was under the direct supervision of Siedlik. Prior to that day, Puig described his interaction with the Respondent as "normal."

In addition to the Respondent's existing assignment of processing parking permits for ESU and the Intelligence Division, Puig decided to give the Respondent the additional task of processing all applications submitted by members assigned to Police.

Headquarters Puig arrived at this decision by looking at a chart of VIU assignments. The chart showed that the Respondent had the fewest applications to process. In 2009, he was responsible for processing approximately 600 applications for ESU and Intelligence. [redacted] to the unit were responsible for over 1,000 applications. Puig noted that the Respondent did process applications from other commands, resulting in a total workload of 1,800 to 2,000 applications that year. Puig estimated that by giving the Respondent the additional task of processing applications submitted from Police Headquarters, the Respondent would be responsible for 1,600 or 1,800 permits in total.

When Puig informed the Respondent on September 20, 2010 that Headquarters parking permits would be added to his list of duties, the Respondent rolled his eyes at him. An hour later, the Respondent approached Puig and told him that although he wanted to know more about his additional duties, he was going on vacation the following day. Since the Respondent expressed his dissatisfaction with his new assignment and Puig did not want the Respondent to think about it while he was on vacation, Puig told him, "When you return, we'll go over the details on how to handle and process Headquarters' permits."

On September 30, 2010, Sergeant Garner informed Puig that the Respondent wanted to meet with him because the Respondent felt his new additional workload was too much for one person to handle. To prepare for this meeting, Puig calculated the number of applications submitted by ESU, the Intelligence Division, and Police Headquarters. Puig concluded that the Respondent's new workload was not too much for him to handle.

At approximately 12 00 p m on October 1, 2010, Puig, Siedlik, and the Respondent met in an IAB conference room. The Respondent pointed his finger at Siedlik and in a "serious" tone asked Puig, "Why is he here?" Puig was surprised by the Respondent's demeanor and, after - - - - - because he was the Respondent's immediate supervisor, Puig told the Respondent that they were going to discuss the Respondent's new assignment. Puig asked the Respondent if he knew how many applications he would now be assigned to handle and whether he knew how many applications he had processed last year. The Respondent replied that he did not know either number, and he did not explain why he thought his new workload was too much. Puig told the Respondent that if he felt he could not accomplish his

As they were walking out of the conference room, Puig reminded the Respondent that he had just informed him of his new additional duties a few days earlier. At that point, the Respondent raised his hands, waved one hand backward in a dismissive manner, and said, "Come on, Lieu. You're making this up. You never said that." The Respondent's tone of voice became very loud while they were in the hallway. Puig, who was walking behind the Respondent, told him that he was becoming disrespectful. The Respondent's voice then got louder as he again claimed that Puig never informed him of his new workload while gesturing with his right hand. Puig again replied that the Respondent was becoming disrespectful. At that point, the Respondent turned around, so that he was face-to-face with Puig. During the turn, the Respondent's left foot hit Puig's right foot. After the turn, their noses were less than an inch apart, their feet were touching, and their chests were in very close proximity. The Respondent then raised both

of his arms in the air with the palms open and his chest out, and he said, "Come on, Lieu. You know I didn't say that. What if I said that you're discriminating against me because [REDACTED] and you know it?" Puig perceived the Respondent's gestures as threatening and he concluded that the Respondent was possibly provoking him into engaging in a physical altercation. Puig looked at Siedlik who was standing three to five feet away. Puig then turned away from the Respondent and walked down the hall as the Respondent walked in the opposite direction. At no point during the encounter did Puig raise his voice or arms, make any gestures, or -

Puig described himself as shocked by the Respondent's behavior. Puig walked down the hall toward Inspector Colamussi's office because Puig intended to inform Colamussi that the Respondent had been discourteous to him, and he wanted to issue a Command Discipline (CD) to the Respondent. As Puig approached the door to

-- the Respondent. The Respondent told Puig, "I want some lost time. This is ridiculous what you're doing to me." Puig denied the Respondent's request and told him to go back to the VIU office. The Respondent did not comply. Instead, he walked away from Puig and into Colamussi's outer office where he began to shout, "This is ridiculous! This is ridiculous! This is discrimination!" When Puig again told the Respondent to return to the VIU office, the Respondent left Colamussi's office but he did not return to the VIU office right away. According to Puig, the Respondent returned to the office "within an hour."

On cross-examination, Puig agreed that when he sought to "revamp" VIU, a plan he ultimately announced at the September 20, 2010 meeting, he first reviewed how parking permit plate requests were distributed among the VIU personnel. He determined

how many applications would be processed by each member of VIU by • = number of applications submitted by commands during the prior year. Puig informed the Respondent at the September 2010 meeting that he was now going to be assigned all Police Headquarters applications. The Respondent was the only member of VIU to be given responsibility for a new command.

In preparation for his October 1, 2010 meeting with the Respondent, Puig gathered a copy of the prior year's "bundle sheet," which contained the number of applications that the Respondent had processed along with the number of applications all other VIU members had processed during the previous year. Puig did not show the Respondent these documents at the meeting nor did he offer to show them to him. Puig stated that he did not have the impression during the meeting that the Respondent had a "serious issue" about his workload. Rather, Puig perceived that the Respondent merely had a "concern."

As soon as the meeting commenced, the Respondent asked Puig why Siedlik was present. Because Puig felt that Siedlik's presence was necessary, he did not ask Siedlik to leave. After Puig explained to the Respondent why Siedlik was attending the meeting, Puig had the impression that the Respondent no longer had a problem with Siedlik being there. Puig could not recall whether or not the Respondent looked at Siedlik during the meeting, other than when Siedlik spoke. Siedlik told the Respondent that they would be "able to get through this" and that if the Respondent had any concerns in the future, he could get the help he needed. All three of them then began discussing how the Respondent needed to work a few days to get adjusted to his new duties. During this conversation, the Respondent raised his voice and said, "Come on, Lieu. Come on,

Lieu ” Puig told the Respondent to lower his voice. The Respondent complied and the three of them continued to discuss the Respondent’s workload.

This meeting ended when Puig told the Respondent that his workload was not going to change. Puig told him, “We’ll get through this and you’ll get the help that you need. Units will assist us and we’ll get through this.” The meeting was not tape-recorded. When the meeting ended, all three of them left the room at about the same time. Puig recalled that the Respondent was the first to leave the room, but he could not recall whether he or Siedlik was the next to leave.

As they were walking out of the room, the Respondent was three to five feet ahead of Puig. No one was walking in between them. Puig tried to reassure the Respondent that he would be able to handle his new workload. The Respondent then turned his back toward Puig and told him, “Come on, Lieu. You didn’t say that. You didn’t tell me about this on the 20th.” When the Respondent turned around and their feet touched, Puig did not perceive the Respondent’s foot hitting his foot as an intentional act or a threat. When the Respondent raised his arms, Puig believed the Respondent was going to push him even though the Respondent kept his hands by his side. Puig turned to the side and backed away. After Puig stepped away, the Respondent turned around and walked in one direction while Puig

The Respondent never moved his hands in Puig’s direction, cursed at him, pursued him, or grabbed him. Although there are video cameras in the hallway, Puig did not know whether these cameras tape recorded the incident.

After the hallway incident, Puig instructed the Respondent twice to return to the VIU office. Puig himself returned to the VIU office approximately ten minutes later, and

the Respondent arrived minutes afterwards. They did not speak with each other at that point. Puig intended to issue the Respondent a CD for being discourteous. He explained that the Respondent was discourteous by raising his arms and invading his (Puig's) personal space.

On redirect examination, Puig testified that he subsequently received instruction from Colamussi not to issue a CD to the Respondent.

Sergeant Jacob Siedlik

Siedlik, a six year member of the Department, is currently assigned to IAB's Vehicle Enforcement Unit. He was previously assigned to VIU, where he served as vehicle identification plate coordinator and supervised four detectives including the Respondent. Prior to October 1, 2010, Siedlik had only normal, professional interactions with the Respondent. On that day, Puig informed him that the Respondent had complained about his workload. Puig wanted Siedlik to be present at a meeting with the Respondent since he was the Respondent's supervisor. Puig was already seated in the meeting room when Siedlik and the Respondent arrived. After Siedlik and the Respondent sat down, Puig explained the reason for the meeting. The Respondent then asked why Siedlik was present. The Respondent appeared to be upset and his demeanor was "a little aggressive" in that he leaned forward and pointed at Siedlik. The Respondent's voice was not raised.

After Puig explained that Siedlik was the Respondent's direct supervisor, the Respondent said, "Yes, but he didn't give me the assignment, you did, so why is he here?" Puig reiterated that because Siedlik was the Respondent's direct supervisor he

should be at the meeting. Puig asked the Respondent to describe his workload, and the Respondent replied that his new workload would require him to process 2,000 permits and that this was too much for one person and unfair in comparison to what other detectives were doing. Puig explained to the Respondent that he would only have to process approximately 1,800 permits and that he would no longer have to answer telephones calls or handle walk-in requests.

At one point during the meeting, the Respondent stated that he did not receive fair notice about his new assignment. Puig reminded the Respondent that he had been given notice, and he mentioned the day that the Respondent rolled his eyes and walked away from him. The Respondent then became upset and denied that that event ever happened. The Respondent began to get visibly angry and told Puig, "You can't say that. You're making things up. That never happened." At that point, the Respondent was not making eye contact with either Puig or Siedlik, and he was shifting back and forth in his chair. While the Respondent spoke, he raised his hands and punctuated his statements with finger pointing or hand gestures. Puig, meanwhile, remained calm and did not raise his voice.

The meeting ended with the Respondent standing up, followed by Puig and Siedlik. The Respondent walked out of the room first with Puig behind him, followed by Siedlik. As the Respondent was standing in the hallway with his back to Puig, he stated, "It's unfair. You can't make things up like this. This never happened." Puig told the Respondent that he was being disrespectful. The Respondent continued to state, in a louder voice, "This isn't fair. You can't do this. This never happened." After Puig told the Respondent a second time that he was being disrespectful, the Respondent turned

around and stated, "You're discriminating against me because [REDACTED] and you fucking know it " Siedlik described the scene as a "face-to-face, very close, aggressive interaction " The Respondent's hands were raised with palms open slightly below head level The Respondent's chest moved forward, but Siedlik did not see any part of the Respondent's body actually make contact with Puig Puig did not become loud and just repeated that the Respondent was being disrespectful

After this hallway incident, the Respondent began to walk toward the VIU office, yelling that Puig was discriminating against him Puig and Siedlik walked toward Colamussi's office As Puig and Siedlik reached Colamussi's door, the Respondent came around the corner and requested lost time for the rest of the day, saying that he "can't handle this " Puig told the Respondent that he would not be granted lost time and that he should to return to the VIU office The Respondent replied, "This is fucking bullshit This is discrimination I want to talk to the Inspector " Puig, Siedlik, and the Respondent all walked into Colamussi's office Lieutenant Beaman informed them that Colamussi was not there, and the Respondent asked, "Well, where is he?" Siedlik described the Respondent's tone and demeanor as loud, rude, and disrespectful to Beaman Puig told the Respondent again to go back to the VIU office and to wait there The Respondent left Colamussi's office

On cross-examination, Siedlik estimated that he was approximately six feet away from Puig and the Respondent in the hallway when he saw the Respondent raise his hands Siedlik did not intercede and separate them When the Respondent turned around to face Puig in the hallway, which Siedlik described as a very fast and aggressive turn, they were within one step of each other Siedlik did not see their feet or any other body

parts touch, nor did he see Puig raise his hands or back away from the Respondent. Puig did not indicate to Siedlik that he felt threatened by the Respondent. Siedlik reiterated that at one point during the hallway incident, the Respondent told Puig, "This isn't fucking fair."

Siedlik notified the Office of Equal Employment Opportunity (OEEO) about the Respondent's allegation of discrimination. An OEEO supervisor told Siedlik to have the Respondent call her. When Siedlik returned to the VIU office, nobody there knew where the Respondent was. At least 45 minutes passed before Siedlik saw the Respondent and was able to give him the message from OEEO.

On redirect examination, Siedlik agreed that during the hallway encounter he saw more of the Respondent's frontal profile than Puig's.

Upon further questioning, he testified that he heard the Respondent ask Beaman, "Where's the Inspector? I want to speak with him." Beaman replied, "The Inspector is not here. He's out in the field." The Respondent then said, "Where is he? I need to speak with him now." At that point, Puig told the Respondent to return to the VIU office. During their conversation, the Respondent and Beaman were not very close to each other.

Lieutenant Marlene Beaman

Beaman, a 25-year member of the Department, is currently assigned to IAB. Prior to October 1, 2010, Beaman saw the Respondent on a daily basis and did not have any problems with him. When the Respondent entered Colamussi's outer office and approached Beaman's cubicle that day, he was visibly upset and speaking loudly. He asked her in a demanding tone, "Is the Inspector in?" When Beaman replied that

Colamussi was in the field, the Respondent asked if he was coming back. The Respondent then left the office.

Beaman recalled that she was "a little stunned" at the Respondent's tone and that her initial reaction was that the Respondent had spoken inappropriately. Both Puig and Siedlik were present when the Respondent spoke to her. When Beaman was asked if the Respondent was upset, Beaman answered, "I guess."

On cross-examination, Beaman agreed that the Respondent's demeanor was out of character for him. She agreed that the Respondent did not speak to her in a threatening manner. Beaman confirmed that she did not ask the Respondent to leave her office, nor did she complain to anyone about the Respondent's conduct. She did not feel compelled to have a private conversation with the Respondent or to issue him a CD because she realized that the Respondent was upset at the time he spoke to her, although he was not upset with her.

Lieutenant John Crisalli

Crisalli, an 18-year member of the Department currently assigned to IAB, investigated the Respondent's failure to turn in an original shield at the time of his promotion. As part of his investigation, Crisalli interviewed Cama. Cama confirmed that the Respondent had, in fact, submitted two duplicate shields. In an official Department interview, the Respondent claimed that his original shield was not lost. The Respondent did not prepare a complaint report for a lost shield, so Crisalli himself prepared a report for the shield on July 8, 2009.

On cross-examination, Crisalli testified that according to Lieutenant Dute (the Respondent's commanding officer at the time), the Respondent informed Dute on November 25, 2008 that SDIU had an issue with the shield he had turned in that day

Upon further questioning, Crisalli testified that at his official Department interview, the Respondent stated that his father had purchased one of the duplicate shields for a plaque he was having made

Sergeant Matthew Smith

Smith, a 14-year member of the Department, is currently assigned to IAB. Prior to October 1, 2010, Smith and the Respondent did not interact much other than saying "hello" and "goodbye." While seated at his desk that day, Smith heard a "commotion" and loud talking in the hallway. The office door then opened and the Respondent entered, saying, "The discriminatory behavior here is disgusting." The Respondent appeared very agitated and spoke in a loud voice.

Puig and Siedlik then came into the office, appearing calm, and the Respondent told them that he was going to see Colamussi. At that point, the Respondent asked Beaman, "Where is he?" The Respondent was referring to Colamussi and Beaman replied that he was not in. Smith testified that the Respondent had asked this question in a "sharp tone of voice," as if he was demanding to see Colamussi. Smith did not interact with the Respondent, but he felt that the Respondent had spoken disrespectfully to Beaman. After Beaman informed the Respondent that Colamussi was not there, Puig told the Respondent to return to the VIU office. The Respondent did not immediately

comply Puig repeated the instruction, and a short time later the Respondent walked out of the room Smith did not know where the Respondent went

On cross-examination, Smith testified that Beaman was sitting at a desk located approximately five feet to his left There were some other members of the service in the office during the incident When the Respondent first entered the office, he appeared upset and angry When Puig and Siedlik entered the office, they did not appear to have just been involved an altercation The Respondent's remark about discriminatory behavior appeared to be directed at Puig and Siedlik Beaman never said anything to Smith about the Respondent's "Where is he?" remark

The Respondent's Case

The Respondent called Sergeant Rommelle Chin as a witness and testified in his own behalf

Sergeant Rommelle Chin

Chin, a 16-year member of the Department, is currently assigned to IAB On October 1, 2010, the Respondent came into her office and told one of the detectives there that he wanted to speak with Chief Strebel Given that she works directly for Strebel, Chin approached the Respondent and asked him what was wrong The Respondent replied that he felt discriminated against because [REDACTED] Chin then asked the Respondent if they could go somewhere private in order to discuss the issue After a five to ten minute conversation, Chin informed the Respondent that she would personally call the OEEA office in order to file a complaint on his behalf During the course of the

conversation, the Respondent told Chin that he felt overwhelmed with the work that Puig was assigning him and that he only received more work when he expressed this concern to Puig. The Respondent also told Chin that he wanted to take lost time. Chin found this request to be reasonable, but she was not in the position to authorize it. Chin told the Respondent that she would try to talk to Puig on his behalf. Chin suggested that the Respondent go for a walk or get lunch, so as to de-escalate the situation. Chin saw the Respondent leave her office, but she did not know where he went. When Chin later spoke with Puig about the situation, Puig told her a different version from that of the Respondent.

On cross-examination, Chin testified that the Respondent appeared very agitated and very upset when he entered her office. She added that when the Respondent opened the door it was as if he kicked in the door. During their conversation, the Respondent never told Chin that Puig had ordered him to return to the VIU office.

On redirect-examination, Chin confirmed that she did not feel the Respondent was being discourteous when he entered the office and requested to see Strebel.

The Respondent

The Respondent, a five-year member of the Department, is currently assigned to the Criminal Justice Bureau. He testified that on that day he handed in his Department-issued police officer shield (shield number 24583) at the desk that SDIU had set up outside the auditorium at Police Headquarters. When Desiderio told him that his shield was not authentic, he informed

her that the shield was the one that he received from the Department. According to the Respondent, he did not have another shield in his possession at any time.

After he was informed that the shield was not authentic, the Respondent reported this to his supervisor, Lieutenant Dute. Dute told him that "it was really no big deal" and that the issue would probably be handled at the command level. The Respondent searched for another shield. When the Respondent informed his father about the matter, his father mentioned to him that he was planning on giving him a plaque in celebration of the promotion. The Respondent's father, a retired member of the service, also informed him that he had purchased a duplicate shield from a firearms and equipment store in Suffolk County. When the Respondent attempted to go to the store in order to discuss the making of the shield, he discovered that the store was out of business.

The Respondent thought that perhaps the duplicate shield his father purchased had somehow gotten switched with his original shield, so he brought this shield with him to the SDIU office "to give it a try." When he submitted this second shield, Desiderio informed him that he had again turned in a bogus shield. [The Respondent identified DX 1 as the shield he turned in at the SDIU office and DX 2 as the shield he turned on promotions day.] Desiderio told the Respondent that a complaint report would have to be filed. When asked why he did not agree that a complaint report was necessary in his case, the Respondent replied, "I couldn't honestly say I lost that shield at any time and provide false information on an official document, indicating that I lost such shield at this date, at that time, at this location. It wouldn't be an honest thing to do."

The Respondent testified that he wore the shield that he mistakenly believed to be authentic for approximately two-and-a-half years. At no point during that period was he

aware that he possessed an inauthentic shield, nor did any member of the Department tell him that his shield looked fake. The Respondent never prepared a complaint report for his shield, and he did not realize that a complaint report had been prepared until he examined the folder for the present case. At some point, the Respondent went to the Department's shield manufacturer, United Insignia, where he spoke with a man who identified himself as the company owner. The man told the Respondent that it is possible during the re-plating process for additional material to be added to or removed from the backs of shields. The man also told the Respondent that it is very difficult to distinguish real shields from fake ones. The Respondent could not recall the man's name. When he asked the man to testify on his behalf, the man told him that he would not testify because he is scared to lose his contract with the Department.

The Respondent testified that on September 20, 2010, Puig met with the VIU staff to discuss changes in work distribution. Puig never specifically outlined the Respondent's

talk more about the changes when the Respondent returned from vacation. Upon returning from vacation, the Respondent learned that he was going to be responsible for processing restricted parking permits for all commands that fall within Headquarters as well as any of their subunits. He calculated that this would entail the processing of permits "well into the thousands." Believing that this increased workload was not an equitable amount with respect to the amount of permits other members in VIU were assigned to process, the Respondent requested a meeting with Puig.

Upon his arrival at work on October 1, 2010, Siedlik informed the Respondent that they were going to have a meeting. When the Respondent entered the conference

room to attend the meeting, Puig was already seated with what appeared to be a bullet sheet of prepared notes that Puig had made in advance. The Respondent could see that Puig was annoyed and upset, as if he was being challenged. Puig told the Respondent that he had already explained the new assignment before the Respondent went on vacation. He also told the Respondent that he was aware that the Respondent had complained to a coworker about the workload. The Respondent felt that the meeting was not going to be productive and that Puig was being "very adversarial" in front of Siedlik.

Siedlik, meanwhile, was uninvolved in the conversation. At one point, the Respondent asked Puig why Siedlik was present. The Respondent testified that he did not feel comfortable with Siedlik being there because he wanted to discuss privately with Puig why he felt Puig was giving him an inordinate amount of work. He also wanted to express things concerning his [REDACTED]. Moreover, because Puig and the Respondent had spoken privately in the past on other issues, the Respondent felt it was understood that they would talk privately on this occasion. Puig explained to the Respondent that Siedlik was present because he was the Respondent's supervisor.

Puig and the Respondent spoke about the Respondent's workload, but Puig was not willing to make any adjustments. Puig told the Respondent something to the effect of, "We will see how it goes." The conversation escalated when Puig returned to the topic of the Respondent complaining to a coworker, which the Respondent testified never took place. While the Respondent made comments about his workload being unfair, he denied ever asserting them with profanity. He also denied ever telling Puig, "This isn't fucking fair." The conversation ended in the conference room with Puig telling the

Respondent that nothing was going to be done about his assignment. The Respondent was upset with this outcome.

When the Respondent exited the conference room, Puig followed him very closely. According to the Respondent, Puig was "basically almost right on top of [him] and was egging [him] on about how he told [him] about the assignment and how [the Respondent had] complained to [a] coworker." Puig also accused the Respondent of being disrespectful at the meeting. The Respondent felt that Puig was being "very abrasive," in that his tone of voice was very confrontational. The Respondent continued to walk away, but at one point he turned around to face Puig. He told Puig, "You're discriminating against me because [REDACTED] and you know it." The Respondent believed that this discrimination was reflected in his workload as well as in other tasks assigned to him, which no one else in VIU had to do, such as performing "strenuous manual labor on a continual basis." The Respondent had filed more than two . regarding earlier incidents of discrimination with IAB and OEEC.

The hallway exchange between Puig and the Respondent ended with the Respondent feeling upset, intimidated, and scared. The Respondent decided to go to Colamussi's office because he wanted supervisory intervention. He also wanted to request a transfer out of the unit. He was upset when he entered Colamussi's office, and he asked Beaman where Colamussi was and if he could speak with him. Beaman informed the Respondent that Colamussi was not in and that he would be back later in the day. The Respondent testified that he believed he merely acknowledged Beaman's response and then walked out of the room. Puig entered Colamussi's office a minute or

so after the Respondent did, but the Respondent did not have any verbal exchange at that point with Puig or Siedlik. He was not given any instructions.

After the Respondent left Colamussi's office, he went to Chief Strebel's office in order to seek higher intervention. As he was heading to Strebel's office, the Respondent feared that Puig and Siedlik, who are both larger individuals, were following him. Once in Strebel's office, the Respondent spoke with Chin for approximately ten minutes. He told her about what had just occurred and that he wanted to take lost time. Chin told the Respondent that she would have to make a complaint to OEEO. Chin also suggested that the Respondent take a walk to clear his head.

The Respondent took Chin's advice and went outside for fresh air and a quick bite to eat. This helped him calm down. Approximately 30 to 45 later, he went back to Chin to ask again about seeing Strebel and taking lost time. He then returned to his office. Puig and Siedlik were there, but there was no continuation of the exchange they had had earlier. He was the subject of an official Department interview that night and was transferred out of the unit several weeks later.

The Respondent denied that he was discourteous to Puig at any time during the course of their October 1, 2010 conversation. He also denied ever cursing or using foul language to Puig, raising his hands in an attempt to strike or threaten him, or having any part of his body come into contact with him. He also denied that Puig ever said, "You're threatening me." While Puig told the Respondent that he did not like the way the meeting went, Puig did not say anything about the Respondent being discourteous or about taking disciplinary action. At no point did Siedlik come between the Respondent and Puig or did any other member of the service have to separate them.

On cross-examination, the Respondent confirmed that 24583 was his police officer shield number. The Respondent did not record or take notes on his conversation with the United Insignia owner.

With regard to the October 1, 2010 incident, the Respondent explained that he did not specifically ask to speak with Puig privately, but he assumed that it would be a private conversation, as they had had private meetings in the past. Toward the end of the meeting, while they were disagreeing over whether or not the Respondent had complained to a coworker, Puig may have told the Respondent that he was being disrespectful.

Upon further questioning, the Respondent confirmed that at no point before he entered Colamussi's office and addressed Beaman did Puig instruct him to return to the VIU office.

FINDINGS AND ANALYSIS

Case No. 85142/09

It is charged that while the Respondent was present at One Police Plaza for promotion to Detective 3rd Grade on November 25, 2008, he was wrongfully in possession of an unauthorized duplicate New York City Police Department shield #24583. It is also charged that the Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that, between December 19, 2006 and November 25, 2008, he failed to properly safeguard his Department shield #24583, the loss of which he did not report. Finally, it is charged that the Respondent

failed to prepare a Lost/Stolen Firearm/Shield/I D Card Report (PD520-150) regarding his lost Department shield

It is not disputed that on Gun and Shield Day at the Police Academy, the Respondent was presented with an authentic, Department-issued police officer's shield bearing the number 24583. It is also not disputed that on November 25, 2008, the Respondent still held the rank of police officer and that he reported to One Police Plaza that day to be promoted to Detective 3rd Grade. It is further undisputed that Respondent appeared at the Shield Desk Identification Unit's (SDIU) table outside of the first floor auditorium, that he handed a shield bearing the number 24583 to Clerical Associate Mary Ann Desiderio, that Desiderio told him that the shield was not an authentic, Department-issued police officer's shield, and that she did not hand him back this shield but, rather, took possession of this shield.

Finally, it is undisputed that shortly after November 25, 2008, the Respondent brought another shield bearing the number 24583 to the SDIU office, that he turned this shield in "to give it a try," but that Desiderio told him that the shield was also not an authentic, Department-issued police officer's shield, that SDIU took possession of this shield, and that the Respondent never turned in any other shield to SDIU. I reject the Respondent's claim that he actually believed that it was possible that this second shield might be his official shield which had accidentally been "switched" with a bogus shield his father had purchased to put on a promotion plaque for him.

I find the Respondent Guilty because I credit Desiderio's and Associate Staff Analyst Jennifer Cama's independent determinations based on their personal examinations of the two shields that the Respondent presented to SDIU that neither of

these shields was the authentic, Department-issued police officer's shield that the Respondent was issued on Gun and Shield Day at the Police Academy. Based on Desiderio's and Cama's testimony regarding their vast experience in examining Department shields to ascertain if they are genuine or bogus, I find that their evaluations of the two shields that the Respondent presented to SDIU constitutes conclusive evidence that both of these shields are bogus shields. The fact that neither Desiderio nor Cama placed either of these shields into an official shield mold does not serve to tarnish their determinations that both of these shields are bogus shields because both Desiderio and Cama offered detailed testimony regarding the physical characteristics that differentiate an authentic, Department-issued shield from an imitation shield.

The Respondent is found Guilty

It is not disputed that at about noon on October 1, 2010, a meeting was held in a conference room inside IAB's offices at 315 Hudson Street, Manhattan, to discuss the increase in the Respondent's workload and that present at this meeting were Lieutenant Puig, Sergeant Siedlik and the Respondent. It is further undisputed that after the Respondent left this meeting, he walked to Inspector Colamussi's office and, after a brief conversation with Lieutenant Beaman who told the Respondent that Inspector Columussi was not there, the Respondent walked over to Chief Strebel's office where he had a brief conversation with Sergeant Chin.

Specification Nos. 1 and 2

It is charged that on October 1, 2010, the Respondent was discourteous to Lieutenant Puig by being argumentative, by implying that Puig was being untruthful, by raising his hands in the air and yelling at Puig, and by being physically and verbally confrontational toward Puig. It is further charged that after Puig directed the Respondent to return to the Vehicle Identification Unit, he failed to comply with Puig's order and told Puig that he was going to the Inspector.

The Respondent denied that he had used any profanity whatsoever inside the conference room or in the hallway or that he made any discourteous gestures to Puig. I credit Puig's testimony that while they were both in the hallway, after he told the Respondent that he had announced his new duties at a September 20 meeting, the Respondent loudly exclaimed, "No you didn't! You're making it up!" and that the Respondent, with his back turned to Puig, raised his arm and made a dismissive gesture with his hand which was consistent with his comments. Puig's testimony regarding the tone of the Respondent's voice and the gesture he made in the hallway have the ring of truth because he candidly acknowledged that during their meeting in the conference room when the Respondent's voice began to get loud he asked the Respondent to lower his voice and he complied by lowering his voice.

I credit Siedlik's claim that in the hallway the Respondent had cursed by stating, "This isn't fucking fair," and that he was being discriminated against "because [REDACTED] and you fucking know it," and that "this is fucking bullshit." I credit Siedlik's testimony because it was devoid of suspect embellishment. Siedlik corroborated the Respondent's claim that he did not utter any profanity inside the conference room. If Siedlik was

inventing his claim that the Respondent had uttered profanity in the hallway, it is likely that he would also have asserted that the Respondent had cursed inside the conference room when the three men were alone

Even if the Respondent believed that he was being discriminated against, and even if he was correct that Puig had not announced the Respondent's new duties at the September 20 meeting as Puig claimed, the fact that the Respondent was certain that Puig was discriminating against him and lying to him did not give the Respondent the right to physically confront Puig, a superior officer, or to direct profane, insubordinate remarks at Puig in the hallway of a Department facility

I further credit Puig's testimony that he told the Respondent to go back to his office, a claim which was corroborated by Siedlik. The Respondent ignored this order, first by walking over to Colamussi's office and then by walking over to Strebel's office

The Respondent is found Guilty of Specification Nos 1 and 2

Specification No 3

It is charged that the Respondent was discourteous to Lieutenant Beaman in that he asked her "where the Inspector was in an irate and confrontational manner"

The evidence presented by the Department does not sufficiently establish that the Respondent spoke or acted in a "confrontational" manner toward Beaman or that he acted in an "irate"¹ manner. Beaman testified that although when the Respondent asked her, "Is the Inspector in?" he appeared to be upset, he was not upset at her. Although Beaman perceived that the Respondent's tone was somewhat inappropriate, she did not testify that the Respondent was irate and when the Assistant Department Advocate specifically asked

¹ Webster's Dictionary defines "irate" as angry, wrathful or incensed

Beaman if the Respondent had been "confrontational" (a leading question which clearly alerted Beaman that she was supposed to answer "yes"), Beaman merely responded, "I guess " Most significantly, it is clear that Beaman did not believe that the Respondent's words and manner constituted discourtesy because she did not complain to anyone about the Respondent, much less initiate disciplinary action, not even a command discipline, against the Respondent

Department witness Smith testified that the only words the Respondent spoke to Beaman were, "Where is he?" Although Smith testified that the Respondent uttered these three words in a loud voice, this fact alone does not constitute being "irate," as opposed to merely upset, or "confrontational " Sergeant Chin, who was called as a witness by the Respondent, testified that although the Respondent appeared agitated and upset, he was not discourteous to her and that he merely told her that he needed to speak to the Chief

The Respondent is found Not Guilty of Specification No 3

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See *Matter of Pell v Board of Education*, 34 N Y 2d 222, 240 (1974) The Respondent was appointed to the Department on July 10, 2006 Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

The Advocate recommended that the Respondent forfeit 30 vacation days

In Disciplinary Case No 85602/09, signed on March 1, 2011, a 13-year police officer, who had no prior disciplinary record, forfeited 30 days served on pre-trial

suspension for twice being discourteous to a sergeant On one occasion, the officer threw up his hands and yelled at the sergeant, "I'm not going to talk to you I have had enough I'm leaving " On another occasion, the officer pointed his finger at the sergeant and stated, "Don't tell me what to do You are not my father I'm not talking to you " In addition, in that case as here, the officer disobeyed a supervisor's directive In that case, was directed by a supervisor to stand by

Having examined the facts and circumstances surrounding the Respondent's misconduct, I recommend that the Respondent forfeit 30 vacation days

Respectfully submitted,

R. VIVAL

by M. Kelly
Robert W. Vival

Assistant Deputy Commissioner - Trials

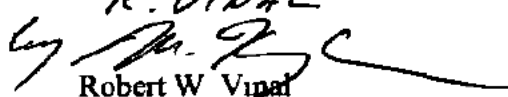
APPROVED
NOV 10 2011
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
DETECTIVE FRANK MALONEY
TAX REGISTRY NO 942112
DISCIPLINARY CASE NOS 85142/09 & 2010-2921

The Respondent received an overall rating of 4.0 on his 2010 performance evaluation, 3.5 on his 2009 evaluation, and 3.5 on his 2008 evaluation. He has no medals [REDACTED] He has no prior formal disciplinary record.

For your consideration

R. VINAL

Robert W Vinal
Assistant Deputy Commissioner - Trials